IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2052 of 1995

with
Special Civil Application No.2061 of 1995

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BABADIN R YADAV

Versus

INSPECTOR GENERAL OF PRISONS

Appearance:
1. Special Civil Application No. 2052 of 1995
MR IS SUPEHIA for Petitioner No. 1
Mr. Nagesh Sood, AGP for Respondent No. 1

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 21/10/2004

COMMON ORAL JUDGEMENT

1. The petitioners, by way of these two petitions under Article 226 of the Constitution of India, challenge the orders dated 22nd February 1994 passed by the Additional Director of Police and Inspector General of

Prisons, State of Gujarat. After following a departmental enquiry, the Disciplinary Authority has, by orders dated 22nd February 1994, imposed penalty upon the petitioners, whereby, the petitioners were reduced to lowest pay-scale of Rs.800/- from the pay-scale of Rs.800-1150 for a period from 1.3.1994 to 29.2.1996 i.e. for a period of two years without future effect. The said orders were passed by the Disciplinary Authority after issuance of show cause notice dated 16th December 1993 to the delinquents. In the said show cause notice dated 16th December 1993, the reasons have been recorded as to on what grounds the proposed penalty was sought to be imposed. The said orders were challenged by the petitioners in Appeals Nos.131 of 1994 and 176 of 1994 before the Gujarat Civil Services Tribunal, which were also dismissed by a common order dated 5th October 1994. The petitioners challenge both the orders of Disciplinary Authority as well as Appellate Authority on various grounds. As common questions of law and facts are involved in both the petitions, they are disposed of by this common judgment.

2. The learned advocate, Mr. I.S. Supehia, for the petitioners, has raised the first contention that, while issuing show cause notice dated 16th December 1993, the Authority was not justified in arriving at the conclusion that the charges against the petitioners were proved and even the reasons recorded by the Authority are also contrary to the settled position of law and the findings of the Enquiry Officers, which clearly exonerated the petitioners, in the enquiry report submitted after the departmental enquiry and, therefore, the impugned orders are arbitrary and are required to be quashed and set aside. The learned advocate has further submitted that, since no evidence was adduced in the departmental enquiry and particularly the witness Laxman Prasad, whose preliminary statement was recorded, was not examined in the enquiry, the impugned orders are, per se, illegal. He has relied upon the judgment of the Supreme Court in the case of Harwari Lal vs. State of Gujarat and others reported in 1999 AIR SCW p.4387, where the Court had quashed and set aside the order of dismissal on the ground of non-examination of the complainant and witnesses who had also accompanied the delinquent to the hospital, and, in the facts of that case, the Supreme Court held that the decision of the Authority was in violation of the principles of natural justice and the petitioner of that petition was ordered to be reinstated in service with 50% back wages. The learned advocate for the petitioner has, further, submitted that the Disciplinary Authority has exercised jurisdiction in

illegal manner and contrary to the Rules particularly when no evidence was available against the petitioners. The learned advocate for the petitioners has, further, submitted that the petitioners were not given higher pay-scale in spite of the fact that it was paid prior to the show cause notice.

3. With regard to charge of allowing charas in the jail premises, the learned advocate for the petitioners has relied upon the judgment of this Court in the case of M.L. Makwana vs Registrar, High Court,_ reported in 20(2) GLR p.796, about not examining the important witness and also about finding of guilt recorded by the Disciplinary Authority is not supported by any material whatsoever, and the order is vitiated by reason of fact that it is based on no evidence. In the present case, according to the learned advocate for the petitioner, there was no proof or evidence as to whether the substance was of charas and no Chemical Analyzer was examined at the enquiry to prove the fact that the substance, which was found, was charas.

4. Learned Assistant Government Pleader, Mr. Nagesh Sood, has submitted that the petitioners were given adequate opportunity to defend their cases and, even though the findings arrived at by the Enquiry Officer in the enquiry report have not substantiated the charges as proved, the Disciplinary Authority is empowered to draw his own conclusion, of course, after recording reasons for not agreeing with the findings of the Enquiry Officer. The learned Assistant Government Pleader has further submitted that the petitioners were charged with grave misconduct of not remaining present at the gate at the relevant point of time and the substance was allowed to be taken into the jail was charas, a contraband substance prohibited under the NDPS Act, and the punishment for such offence is very severe. He has further submitted that the Disciplinary Authority has recorded reasons for disagreeing with the finding of the Enquiry Officer, and even a lenient view was taken by reducing the pay-scale of the petitioners to the lowest pay-scale only for a period of two years without future effect. He has further submitted that, so far as the finding of the Enquiry Officer is concerned with regard to the evidence, in view of a catena of decisions of the Supreme Court, strict proof of evidence, as required in criminal law, is not stricto-sensu applicable to the departmental enquiry. He has further relied upon the findings of the Tribunal in paragraphs 12, 13 and 14 and submitted that cogent reasons have been given by the Tribunal, and this Court in exercise of its power under

Articles 226 and 227 of the Constitution will not disturb the findings of the Disciplinary Authority as well as the Appellate Authority in appeal, unless the findings are perverse or bad in law or illegal per se.

5. I have heard the learned advocates for the parties. I am not in agreement with the submission of the learned advocate for the petitioners, in view of the fact that the petitioners were working as Sepoys in the disciplinary force like police and were assigned the work to guard the prison at the main gate No.1 and, at the relevant point of time, they have indulged in dereliction of duty. When the search was carried out, one Laxmanprasad was found with charas. Irrespective of finding of the Enquiry Officer, when strict proof of evidence is not applicable in the departmental enquiry, it is established from the record, as held by the Disciplinary Authority as well as the Tribunal, that a correction was made in the duty register at gate No.1 and it was found that the petitioners had not searched the prisoners who were taken to the Court and, prima facie, it appears that the petitioners have misconducted themselves.

6. The submission of the learned advocate for the petitioners with regard to issuance of show cause notice by the Disciplinary Authority for not agreeing with the finding of the Enquiry Officer has no substance, since the Disciplinary Authority has given adequate and cogent reasons for not agreeing with the finding of the Enquiry Officer which are reflected in the show cause notice dated 16th December 1993. The Disciplinary Authority has, prima-facie, come to the conclusion that the charges are proved, and, therefore, a notice was given to the petitioners against the proposed punishment. It is clearly mentioned in the said notice that the petitioners were not at the main gate No.1 on 29.4.1989 and it was wrongly urged that the petitioner in Special Civil Application No.2052 of 2995 was assigned duties at police mess.

7. The submission of the learned advocate for the petitioner with regard to analyzing the substance, which was alleged to have been found from the petitioner, namely, charas, by the expert, is also not warranted and even the finding of the Enquiry Officer in this regard cannot be believed that it requires conclusively to be proved only by the report of the Chemical Analyser when the preponderance of probability, as expected during the criminal trial, cannot have equal application in the matter of departmental enquiry. The very fact that the

petitioner was not on duty at gate No.1 and the substance of charas was taken into the prison by the prisoners without search by the petitioners, is itself sufficient to warrant punishment as awarded rightly by the Disciplinary Authority. So far as the judgment of the Supreme Court in the case of Hardwari Lal vs. State of U.P. and others, reported in 1999 AIR SCW 4387 is concerned, it was a case of dismissal of a police constable and the Supreme Court has come to the conclusion, as stated in paragraph 3 of the said judgment, as under:

"3. Before us the sole ground urged is as to the non-observance of the principles of natural justice in not examining the complainant, Shri Virender Singh, and witness Jagdish Ram. The Tribunal as well as the High Court have brushed aside the grievance made by the appellant that the non-examination of those two persons has prejudiced his case. Examination of these two witnesses would have revealed as to whether the complaint made by Virender Singh was correct or not and to establish that he was the best person to speak to its veracity. So also, Jagdish Ram, who had accompanied the appellant to the hospital for medical examination, would have been an important witness to prove the state or the condition of the appellant. We do not think the Tribunal and the High Court were justified in thinking that non-examination of these two persons could not be material. In these circumstances, we are of the view that the High Court and the Tribunal erred in not attaching importance to this contention of the appellant."

In the present case, the Authority has imposed proportionate penalty to the misconduct and negligence or deriliction of duty by the petitioners, of reducing the pay of the petitioners to the lowest pay-scale for a period of two years, after taking into consideration the evidence on record.

8. So far as taking away the higher grade scale granted to the petitioner by order dated 21st February 1994 with effect from 1987 is concerned, it is to be noted that the punishment was inflicted upon the petitioners for a period of two years, i.e. from 1.3.1994 to 29.2.1996 and that too without future effect. It is rightly held by the Tribunal in paragraph 16 that granting of higher grade scale by the Superintendent of Special Prison, Porbandar, pending the disciplinary proceeding against the petitioners was not legal and proper and, therefore, it was rightly cancelled by the officers. If the higher grade, which is taken away from the petitioners which was granted with effect from 1987, is to be given to the petitioners after the period of

punishment is over in February 1996, the same may be continued barring the period of departmental enquiry.

9. As a result of foregoing discussion, the petitions fail and are rejected. Rule is discharged in each petition with no order as to costs.

(Anant S. Dave, J.)
(swamy)